

REMARKS

In the October 6, 2005 Office Action, the Examiner noted that claims 1-46 were pending in the application; allowed claims 14-18; rejected claims 1-3, 11, 19-22, 25-33 and 39 under 35 USC § 102(a); and objected to claims 4-10, 12, 13, 23, 24, 34-38 and 40-46 as dependent from rejected base claims. Claims 1-46 remain in the case. The Examiner rejections are traversed below.

Rejections under 35 USC § 102(a)

In item 4 on pages 2-8 of the Office Action, claims 1-3, 11, 19-22, 25-33 and 39 were rejected under 35 USC § 102(a) as anticipated by an article by Foote (Reference AK in the Information Disclosure Statement filed August 6, 2004). In making this rejection the only indication of what was relevant in Foote was "section 3, tree based template generation" (e.g., Office Action, page 3, line 2) and with respect to the limitations recited in claim 2, "section 4" (Office Action, page 3, line 11).

One of the many differences between the invention and Foote was discussed in the Amendment filed by certificate of mail on May 4, 2005 and received by the Patent and Trademark Office on May 9, 2005. As stated therein, the last three lines of claims 1 and 31 recite "determining at least one matching record in the database for the at least one selected file based on the sample values and **an indication of an amount of data in the at least one selected file**" (emphasis added). No mention has been found in Foote regarding the length or amount of data in each of the recordings being matched.

Section 3 of Foote mentions "an appropriate distance measure to compare the templates" (first paragraph of section 3.1, lines 2-3) and uses the term "distance" **between** items, in this case templates, as a measure of how different the items are. This is unrelated to the size, length or amount of data of the templates themselves or the recordings from which the templates were obtained.

Section 3 of Foote also mentions pruning a tree-structured quantizer "to different sizes depending on the amount of data" (paragraph preceding section 3.1, lines 1-2). Once again, the "sizes" and "amount of data" do not refer to individual files or recordings as recited in the claims, but rather to the total number of samples, as indicated by the next sentence, i.e., "the tree size directly determines the size of the histogram template." The "histogram template" is a representation of a sample, not "at least one selected file" as recited in claims 1 and 31.

For at least the above reasons, it is submitted that claims 1 and 31, as well as claims 2 and 32 which depend therefrom, patentably distinguish over Foote. Nothing has been found in the experiments described in section 4 that relates to indicating an amount of data or "calculating approximate playback times for the files represented by the records in the database and for the at least one selected file" (claim 2, lines 3-4) as asserted in the rejection of claim 2.

Claims 3 and 33 recite "calculating an approximate length of each track of each recording represented in the database and of the selected recording" (e.g., claim 3, lines 5-6) and "determining at least one matching record in the database for the selected recording based on the sample values and the number and length of tracks of the recordings represented in the database and the selected recording" (claims 3 and 33, last 3 lines). No mention of tracks has been found in Foote, let alone using the number of them in matching records or calculating the length of a track. Therefore, it is submitted that claims 3 and 33, as well as claims 11 and 39 which depend therefrom, patentably distinguish over Foote for at least these reasons.

Claim 21 recites determining "at least one matching record in the database for the selected recording based on an indication of playback time" (claim 21, lines 5-6). As discussed above with respect to the size, length or amount of data of the selected recording, no suggestion has been found in Foote of how long it takes to play back a recording or using this playback time in determining whether there is a match. Therefore, it is submitted that claim 21 patentably distinguishes over Foote for at least this reason.

Claim 22 recites storing "information indicating length and number of identified segments of the recordings" (claim 22, lines 3-4) and "approximate length information and a number of identified segments in the selected recording" (claim 22, last 2 lines). No mention has been found in Foote of storing such information or using such information to "determine at least one matching record" (claim 22, line 7). Therefore, it is submitted that claim 22 patentably distinguishes over Foote for at least these reasons.

Claim 25 recites a "number of segments and the length information for the selected recording" (claim 25, line 6) in "a query to search for a match between a selected recording and the records in the database" (claim 25, lines 4-5). No mention of queries containing such information has been found in Foote. Therefore, it is submitted that claim 25 and claims 26-30 which depend therefrom patentably distinguish over Foote for at least this reason.

Unlike the claims discussed above, claim 19 does not recite anything about the size, length, or amount of data of files or recordings being compared. Instead, claim 19 recites details of how queries are sent, specifically "sending the query from the user equipment to a server at a second location where the database is stored, to search for at least one matching record" (claim

19, last 2 lines). No mention of servers or user equipment has been found in section 3 or anywhere else in Foote. Thus, at a minimum, Foote is a non-enabling reference. Furthermore, it is submitted that there is nothing in Foote that would make it obvious to one of ordinary skill in the art to implement the matching techniques taught by Foote in a client-server environment using queries as recited in claim 19. For the above reasons, it is submitted that claim 19 and claim 20 which depends therefrom patentably distinguish over Foote for at least this reason.

Request for Examiner Interview

The lack of explanation of what in Foote is believed to anticipate the limitations recited in each of the rejected claims made it impossible to fully respond to the Office Action. If the rejection is not withdrawn as a result of this Response, the Examiner is respectfully requested to contact the undersigned by telephone to arrange an Examiner Interview prior to issuing another Office Action, to expedite the process of explaining why the Examiner believes Foote is relevant to any of the claims and providing the undersigned with an opportunity to respond to that explanation.

Regardless of whether an Examiner Interview is held, it is submitted that the next Office Action should not be final, due to the failure to point out where Foote discloses each feature of the rejected claims, as required by 37 C.F.R. § 1.104(c)(2).

Summary

It is submitted that Foote does not teach or suggest the features of the present claimed invention. Thus, it is submitted that claims 1-46 are in a condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are earnestly solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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